



Judicial Impact Statement

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SB 248 & HB 411: Wrongful Imprisonment

SB 248

Sens. Eklund, Sykes

HB 411

Reps. Seitz, Sykes

Title Information

The bill seeks to amend R.C. 2305.02 and of the to modify the state's wrongful imprisonment law.

Background

The Ohio Supreme Court has held in *Mansaray v. State*¹ that, as currently drafted, R.C. 2743.48 applies very narrowly, precluding many wrongful imprisonment claims.

In 2003, when R.C. 2743.48 was last amended, the status of “wrongfully imprisoned individual” was expanded to include not only those able to prove actual innocence but also persons convicted because of an “error in procedure.” R.C. 2743.48(A)(5). As amended in 2003 and read very literally, the “error in procedure [that] resulted in the individual’s release” following a wrongful conviction had to have occurred “[s]ubsequent to [trial and] sentencing and during or subsequent to imprisonment.” An “error in procedure” relative to guilt would not occur after a felony sentencing and/or during or subsequent to imprisonment, but the Supreme Court declined to read the statute more broadly. In *Mansaray*, the court recognized that if the language used in the statute was more narrow than the legislature had intended it, the General Assembly “will be able to enact such [new] legislation upon learning that we do not think that it has already [provided any remedy for errors in procedure before or at a felony trial].” *Mansaray* at ¶ 10.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

As introduced, the bill allows a wrongful imprisonment claim based on error in procedure only for a Brady violation. *Brady v. Maryland*,² is a landmark U.S. Supreme Court decision which held that the prosecution must turn over evidence favorable to an accused. Failure to do so violates due process where the evidence is material to either guilt or punishment, irrespective of the good or bad faith of the prosecution; this is known as a *Brady* violation. The Ohio Supreme Court's leading decision on *Brady* was issued following the 1984 capital murder conviction of Dale N. Johnston in Hocking County. Mr. Johnston was sentenced to death row, but

¹ *Mansaray v. State* 138 Ohio St.3d 277, 2014-Ohio-750

² *Brady v. Maryland* 373 U.S. 83 (1962)

ultimately had his conviction reversed in both the Fourth District and the Supreme Court.³

Judicial Impact

Limiting an “error in procedure” for wrongful imprisonment purposes to only *Brady* violations overlooks a number of other types of constitutional, statutory, and evidence rule-based errors that may also result in wrongful imprisonment. One type of constitutional error, raised in criminal cases far more frequently than a *Brady* violation, is ineffective assistance of counsel.⁴ Other potential constitutional issues include Fourth Amendment violations involving warrantless entries to property, violations of *Miranda*, or confessions coerced in violation of due process rights. There are also several non-constitutional errors in procedure that may result in a wrongful conviction. In *Johnston’s* trial, testimony was supplied by prosecution witnesses after hypnosis. On appeal, the Ohio Supreme Court recognized the limited scientific understanding of hypnosis and its effect on memory, and limited its admissibility.

Conclusion

Errors, whether constitutional, statutory, or evidence-rule based are all equivalent from the perspective of a citizen not given a fair trial and wrongfully imprisoned under an invalid conviction. Accordingly, we recommend that the term “error in procedure” be specifically defined, and not limited to *Brady* violations.

Delete at Line 63:

“the *Brady* Rule which violated”

Add at Lines 64-66:

*** a violation of the individual’s right[] to a fair trial under the Ohio Constitution or the United States Constitution, “or under one or more procedural rules for criminal trials in the Revised Code, or provisions in the Ohio Rules of Evidence,” and that resulted in the individual’s release, *** etc.

Change at line 65:

“rights” to singular “right” to a fair trial.

Revise at Lines 351 - 354:

Eliminate existing language in Bills starting with “*Brady* Rule” and have (J)(1) read:

(J)(1) As used in division (A) of this section, an error in procedure includes a violation of the individual’s right to a fair trial due to one or more errors under the Ohio Constitution or the United States Constitution, the procedural rules for criminal trials in the Revised Code, or the Ohio Rules of Evidence.

Change at Line 62:

Substitute the word “discovered” with “judicially recognized.”

Add:

SECTION 3. Sections 2305.02 and 2743.48 of the Revised Code, as amended or enacted by this act, are remedial, and proceedings under them shall be liberally construed in order to promote their object and assist any wrongfully imprisoned individual in obtaining justice. The scope of an “error in procedure” as clarified in this act shall be applied retroactively, and the doctrine of *res judicata* shall not be applied to foreclose a claim under provisions first adopted in this act.

³ *State v. Johnston*, 39 Ohio St.3d 48 (1988), Syllabus ¶ 4, addressed one of the errors at his trial, and remains a leading Ohio case on *Brady*.

⁴ *Strickland v. Washington*, 466 U.S. 668 (1984). (LEXIS shows that *Strickland* has been cited in almost 12,000 Ohio cases.)